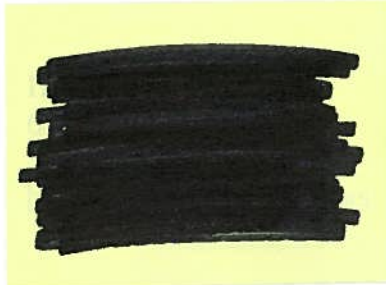


## Maryland Commission on Capital Punishment

Testimony of:



410 330 0935

Dear Members of the Commission:

My name is Harold Bernadzikowski, and I am here today to testify in support of the death penalty in the State of Maryland.

I have always supported the death penalty, but my position on this issue became even more solidified when my family became part of the growing number of families who have the tragic misfortune of losing a family member to homicide. It has been over 8 years since my sister, Heidi Louise Bernadzikowski, was murdered, but it is something that I think about every day. I do not want to go into the gory details, but suffice it to say that nobody should die the way she did, and certainly people who commit such crimes should have to forfeit their life.

Many people, including several members of this Commission, also know firsthand, the awful pain of homicide. Regardless of how the person died, or what age, or what race, or the location, or what economic background of the victim, homicide is the most heinous crime to commit upon another human being; to take their life and end it in pain, and suffering, and terror, alone without help or comfort from a loved one. And make no mistake about it; the survivors' lives are undeniably changed forever, with many people suffering debilitating stress or depression.

It is hard to believe that there could even be a question about how to punish people who are guilty of committing homicide, considering that in the not so distant past, a person could be hung for stealing another person's horse. A horse was merely someone's means of transportation, or means of working, their livelihood. But homicide is not about taking away a person's livelihood; it is about taking away a person's ***life; their breath, their thoughts, their past, their future; their entire life.*** Yet, in this day and age, the punishment meted out for such a heinous crime is rarely commensurate with the actions of the criminal. Somehow the scales of justice have become too tilted toward the side of sympathy for the criminal instead of justice for the victim.

I understand that there are concerns and questions by those who oppose the death penalty, and that is why this Commission was formed, to study those concerns and determine how to address the concerns. However, it seems in some ways that there is a predetermined outcome to these proceedings, especially considering how very little has been talked about in terms of how to *improve* the current death penalty system as opposed to how to end it entirely.

There are 7 "topic areas" being examined by the Commission, so I would like to briefly address each of those before offering my recommendation for how preserve the death penalty system. ~~There are 7 "topic areas" being examined by the Commission, so I would like to briefly address each of those before offering my recommendation for how preserve the death penalty system.~~

The first three topic areas deal with racial, jurisdictional, and socio-economic disparities in the application of the death penalty to homicide cases. These three issues are interrelated and are generally based on generic statistics that when an African American is the victim, the prosecutors seek the death penalty less frequently than when the victim is Caucasian (non-black). The vast majority of homicide cases in which the victim is African American, occur in Baltimore City. There is a serious problem with witnesses being reluctant to testify at trials for fear of retaliation or retribution, especially if the victim or the suspect is possibly linked to gangs or gang-related activity, which is much more systematic in Baltimore City than in surrounding "suburban" counties, where victims are more likely to be non-black and of a higher income group. So, when looking beyond the generic statistics, the more factual explanation for this phenomenon, especially in Baltimore City, is that the prosecutors didn't have had the solid evidence, including eyewitnesses, in order to mount a successful prosecution with the death penalty on the table. If the evidence is weak, and the possible penalty is death, then a jury may be hesitant to convict. Many prosecutors would rather prosecute with a lesser penalty and have a better chance of conviction, than risk going for the death penalty and risk having the suspect acquitted and put back on the streets. It is no wonder then, that prosecutors in Baltimore City seek the death penalty less frequently than prosecutors in "wealthier" or "whiter" jurisdictions do, but it is not a matter of racial or socio-economic bias against the victim.

The fourth topic area deals with the cost comparison of expenses to incarcerate a person for "life in prison" versus the expenses to prosecute a case where the death penalty is sought. I have not seen an actual comparative cost analysis, but I would like to know if the costs associated with incarcerating a person for life include the costs: to heat the prison, to cool the prison, to clean the prison, to maintain and repair the facilities, to provide water and sewer service, the cost to employ the wardens and guards, as well the costs associated with the pensions for all of the prison personnel. If prior analyses did not include those items, then they are incomplete.

Furthermore, when you look at the number of homicide cases each year in just Baltimore City, it is around 300 per year. If there is a successful prosecution in each case, and the maximum penalty was life in prison, then that would be 300 additional prisoners each year. So, every few years, the State of Maryland would have to build a new prison somewhere (not an easy task given community opposition) or they would have to release other prisoners early (not a viable option when the State is supposed to be sending a message of being tough on crime to criminals).

However, even if all of those expenses added up and were less than the cost to prosecute a death penalty case, I would reply that **there is no price tag that can be put on a victim's life, and no price tag that can be put on obtaining justice for victims.**

The fifth topic area deals with the issue of prolonged court cases, especially the appeals process. This is probably the part of the system that is most in need of improvement and adjustment. It has been claimed by many death penalty opponents that the death penalty is not a deterrent. To a degree, given the current judicial system and process, that could be true. It is not much of a deterrent when a convicted criminal given the death penalty can file appeal after appeal after appeal, each of which takes years to get scheduled, heard, and completed. The system should allow for a limited number of appeals, which are a necessary protection for those accused/convicted of a crime, and those cases should be expedited and heard within 90 days. If criminals knew that they couldn't drag the appeal process out for 10, 15 or 20 years, if they knew that punishment could be, or would be, carried out swiftly and surely, then they might reconsider their actions before acting. The current system is equivalent to a parent giving their child a "timeout" at the age of 7 but not carrying out the punishment until the age of 15. The child would certainly not view the timeout as a deterrent to future bad behavior.

The sixth and seventh topic areas deal with the concern that innocent people could be executed and the use of DNA evidence in capital cases. It is well documented that in the past few years, there have been a number of cases where convicted persons were ultimately exonerated and released from prison, mostly due to new DNA evidence or re-examined DNA evidence. What has been glossed over is that many of those cases were more than 15-20 years old, some of those convictions were not founded on DNA evidence, and the trials occurred when DNA testing and forensic technology was still relatively new. The field of DNA forensics has become much more refined and advanced during that time, and is that much more reliable and accurate today. It is because of those advancements that it is even less likely that an innocent person could be wrongly convicted and sentenced to death in the present.

As for the concern about innocent persons being wrongly convicted and executed, that is a very legitimate concern, although I think it is equally concerning that guilty people could be, and often are, acquitted. It is not something that anti-death penalty people or public defenders like to discuss. Why are they not equally concerned about a guilty person being wrongfully acquitted? And what if that person then goes on to commit additional crimes in the future? It seems that those people focused on defendant's rights want a system that is 100% perfect in terms of accurate convictions, but they speak nothing of guaranteeing 100% perfection in terms of accurate acquittals. If we are to have faith in the jury system when a jury acquits someone, aren't we supposed to have equal faith in a jury's decision to convict someone? Isn't that why most judicial systems require a unanimous decision from a jury for the simple reason that the likelihood of 12 people all deciding incorrectly to convict someone is so minute?

In fact, it seems a little imbalanced that a prosecutor only gets one shot at conviction and justice for a victim, but a defendant gets multiple shots at acquittal. Maybe it's time that the notion of "double jeopardy" is reformed to allow for future re-prosecution if new evidence is obtained or discovered.

There is also the argument that the death penalty is tantamount to revenge. Nothing could be further from the truth. Revenge would be if a victim's family member simply went out and killed the suspected criminal. The death penalty is a sentence handed down by a jury, comprised of neutral citizens other than the victim's family or friends, operating under the governing watch of a judge, and adhering to legal and procedural rules, and the defendant has the opportunity to himself or herself. Only if someone is not afforded an opportunity to defend against the accusation could that be considered revenge.

When considering all of these factors and concerns, instead of banning the death penalty, I recommend the following:

1. That the State of Maryland create a panel, or authorize each jurisdiction to create their own panel, similar to a Grand Jury or a Parole Board, to review each and every homicide case and determine in which cases the prosecutor should **not** seek the death penalty. If there isn't sufficient evidence, then the panel could determine that the case is not "clear cut" and take the death penalty off the table. By doing so, the death penalty would be preserved for those cases where it is clear cut and the death penalty would not be pursued in cases where there is ambiguity and a possibility of convicting an innocent person.
2. Set minimum standards for what evidence would allow the panel to approve seeking the death penalty. For example, require eyewitness testimony from more than one source; require DNA evidence; require an admission of guilt by the accused; or require a combination of those.
3. Make exceptions for cases deemed so heinous that the death penalty is warranted. This would be for serial killers or someone accused of committing multiple homicides.

I would like offer a few final thoughts on the punishment of "life in prison" since that is what is being offered as the alternative to the death penalty, and it would be the typical punishment if the death penalty were to be banned. I know that on the surface, it is a very tough punishment. However, when you look at it more closely, there are aspects of it that fall short of justice in my opinion.

First, just because a person is in prison doesn't mean that they are no longer a threat to society. Criminals can still continue their criminal activities from inside a prison and still pose potential danger to prison guards. In fact, just within the last few years several prison guards were killed at a State prison. Ask their families if prisoners are no longer a threat. And, even more recently, I recall a news story about a prisoner in Hagerstown (I believe) who orchestrated gang/drug related activities, including a homicide, while in prison. Proof positive that merely putting someone in prison does not automatically put an end to their criminal behavior.

Furthermore, living in prison is still living. Prisoners can be visited by family and friends, they can have boyfriends or girlfriends, they can still get married, they can take college type courses and earn a college degree, they can even have children of their own.

They still can do many of the things that law-abiding citizens get to do. But victims of homicide don't have that luxury. If they hadn't already done so, they will never walk down the aisle for their own wedding, or have children or grandchildren, or earn a college degree. And the families and friends of homicide victims don't have the luxury of visiting their loved ones. The only things we can visit are distant memories or gravestones.

In conclusion, if this Commission is going to make changes to the punishment system in this State, then I implore you to make changes that will make the system tougher, stricter, and faster, in providing justice. Put victim's rights first by keeping the death penalty.

Thank you for your time and consideration.

